

188197

STATE OF SOUTH CAROLINA)

(Caption of Case))

COPY)

Posted: led)Dept: SA)Date: 9/13/07)Time: 10:25)BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER: 2007 - 294 - W/S

(Please type or print)

Submitted by: John M.S. Hoefer +SC Bar Number: 2549Telephone: 803-252-3300Fax: 803-771-2410

Other: _____

Address: Post Office Box 8416Columbia, SC 29202Email: jhoefer@willoughbyhoefer.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition☐ Request for item to be placed on Commission's Agenda expeditiously☐ Other: _____

| INDUSTRY (Check one) | NATURE OF ACTION (Check all that apply) | | |
|--|--|--|--|
| <input type="checkbox"/> Electric | <input type="checkbox"/> Affidavit | <input type="checkbox"/> Letter | <input type="checkbox"/> Request |
| <input type="checkbox"/> Electric/Gas | <input type="checkbox"/> Agreement | <input type="checkbox"/> Memorandum | <input type="checkbox"/> Request for Certification |
| <input type="checkbox"/> Electric/Telecommunications | <input checked="" type="checkbox"/> Answer | <input checked="" type="checkbox"/> Motion | <input type="checkbox"/> Request for Investigation |
| <input type="checkbox"/> Electric/Water | <input type="checkbox"/> Appellate Review | <input type="checkbox"/> Objection | <input type="checkbox"/> Resale Agreement |
| <input type="checkbox"/> Electric/Water/Telecom. | <input type="checkbox"/> Application | <input type="checkbox"/> Petition | <input type="checkbox"/> Resale Amendment |
| <input type="checkbox"/> Electric/Water/Sewer | <input type="checkbox"/> Brief | <input type="checkbox"/> Petition for Reconsideration | <input type="checkbox"/> Reservation Letter |
| <input type="checkbox"/> Gas | <input type="checkbox"/> Certificate | <input type="checkbox"/> Petition for Rulemaking | <input type="checkbox"/> Response |
| <input type="checkbox"/> Railroad | <input type="checkbox"/> Comments | <input type="checkbox"/> Petition for Rule to Show Cause | <input type="checkbox"/> Response to Discovery |
| <input type="checkbox"/> Sewer | <input type="checkbox"/> Complaint | <input type="checkbox"/> Petition to Intervene | <input type="checkbox"/> Return to Petition |
| <input type="checkbox"/> Telecommunications | <input type="checkbox"/> Consent Order | <input type="checkbox"/> Petition to Intervene Out of Time | <input type="checkbox"/> Stipulation |
| <input type="checkbox"/> Transportation | <input type="checkbox"/> Discovery | <input type="checkbox"/> Prefiled Testimony | <input type="checkbox"/> Subpoena |
| <input type="checkbox"/> Water | <input type="checkbox"/> Exhibit | <input type="checkbox"/> Promotion | <input type="checkbox"/> Tariff |
| <input checked="" type="checkbox"/> Water/Sewer | <input type="checkbox"/> Expedited Consideration | <input type="checkbox"/> Proposed Order | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Administrative Matter | <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest | |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit | |
| | <input type="checkbox"/> Late-Filed Exhibit | <input type="checkbox"/> Report | |

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SEP 13 2007

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WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW

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TRACEY C. GREEN
SPECIAL COUNSEL

September 12, 2007

*ALSO ADMITTED IN TX
**ALSO ADMITTED IN VA

RECEIVED
2007 SEP 12 PM 4:37
SC PUBLIC SERVICE
COMMISSION

VIA HAND-DELIVERY

The Honorable Charles L.A. Terreni
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

RE: Concerned Citizens Against Carolina Water, Inc. v. Carolina Water Service, Inc.;
Docket No. 2007-294-W/S

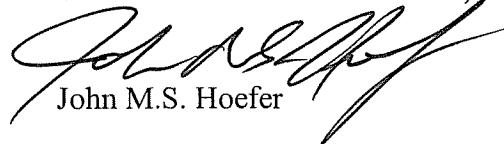
Dear Mr. Terreni:

Enclosed for filing in order are the original and ten (10) copies of the Carolina Water Service, Inc. 1) Motion to Dismiss and 2) Answer in the above-referenced matter. By copy of this letter, I am serving a copy of these documents upon all parties of record and enclose a Certificate of Service to that effect.

I would appreciate your acknowledging receipt of these documents and Certificate by date-stamping the extra copies that are enclosed and returning them to me via our courier. If you have any questions or if you need any additional information, please do not hesitate to contact us.

Sincerely,

WILLOUGHBY & HOEFER, P.A.


John M.S. Hofer

JMSH/twb

Enclosures

cc: Mrs. Brenda Bryant
Jeffrey M. Nelson, Esquire

RECEIVED

SEP 13 2007

PSC SC
DOCKETING DEPT.

RETURN DATE: 11/1
SERVICE: Ok to d

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2007-294-W/S

IN RE:

Concerned Citizens Against
Carolina Water, Inc.
Complainant/Petitioner

v.

Carolina Water Service, Inc.
Defendant/Respondent

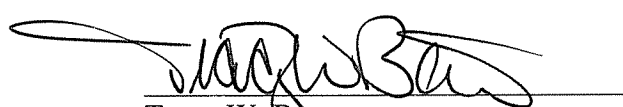
CERTIFICATE OF SERVICE

RECEIVED
2007 SEP 12 PM 4:37
SC PUBLIC SERVICE
COMMISSION

This is to certify that I have caused to be served this day one (1) copy of **Carolina Water Service, Inc. 1) Motion to Dismiss and 2) Answer** for the above-captioned matter by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Mrs. Brenda Bryant
264 Ashton Circle
Lexington, South Carolina 29073

Jeffrey M. Nelson, Esquire
Office of Regulatory Staff
Post Office Box 11263
Columbia, South Carolina 29211


Tracy W. Barnes

Columbia, South Carolina
This 12th day of September, 2007.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2007-294-W/S

| | | |
|------------------------------|---|----------------------------------|
| IN RE: |) | |
| |) | |
| Concerned Citizens Against |) | |
| Carolina Water, Inc. |) | |
| Complainant/Petitioner |) | MOTION TO DISMISS AND FOR |
| |) | IMPOSITION OF SANCTIONS |
| v. |) | |
| |) | |
| Carolina Water Service, Inc. |) | |
| Defendant/Respondent |) | |
| _____ |) | |

Pursuant to 26 S.C. Code Ann. Regs. R. 103-829 (State Register Volume 31, Issue 4, effective April 27, 2007)¹, Carolina Water Service, Inc. (“CWS” or “the Company”) herein moves the Public Service Commission of South Carolina (“Commission”) to dismiss the above-captioned matter on the grounds that the Petitioner’s Complaint and Petition For Rate Reduction and Decertification (“Complaint”) filed therein is the product of the unauthorized practice of law, fails to support a request for a hearing, does not meet the Commission’s requirements for pleadings, and seeks relief not within the jurisdiction of the Commission. Further, the Company submits that the Complaint constitutes a frivolous action as defined in S.C. Code Ann. Section 15-36-10, *et seq.* and moves that the Commission impose sanctions against Complainant and award attorneys’ fees to CWS. In support of this motion, CWS would respectfully show as follows:

¹ This rule entitled “Motions” was previously denominated as 26 S.C. Code Ann. Regs. R. 103-840 and was recently amended, renumbered and published in the State Register Volume 31, Issue 4, effective April 27, 2007.

I. BACKGROUND

On or about January 16, 2007, Brenda Bryant, a customer of CWS, filed a complaint with the Commission in Docket No. 2007-26-W/S in her personal capacity as a customer of CWS. Therein, she requested a formal hearing to dispute the amount of water usage and billing at her residence. The Commission granted this request and, on July 26, 2007, held a hearing to afford the parties an opportunity to present testimony and introduce evidence into the record of that proceeding. On August 8, 2007, the Commission convened its weekly meeting and, by a unanimously approved motion, denied Ms. Bryant's request for relief on the grounds that she failed to present sufficient evidence and failed to meet her burden of proof.²

A mere two days after the Commission denied Mrs. Bryant's request for relief, CCACW, South Carolina a non-profit corporation, filed the present Complaint with the Commission. The Complaint, which was signed by Ms. Bryant in her purported capacity as the President of CCACW requests, *inter alia*, that the Commission revoke the certification of CWS to provide water and sewer services to the customers of the I-20 service area, require CWS to sell its assets and facilities in South Carolina, and to reduce the current I-20 service area tariff and rate schedule on file for CWS.

II. UNAUTHORIZED PRACTICE OF LAW

The Complaint filed by CCACW in this matter is improperly before the Commission as it is the product of the unauthorized practice of law. As asserted therein, the Complaint was filed on behalf of CCACW by Ms. Bryant in her official capacity as its President. The Company submits that Ms. Bryant is not licensed as an attorney or otherwise authorized to practice law in South Carolina

² See Commission Directive dated August 8, 2007, Docket No. 2007-26-W/S. To the Respondent's knowledge, the Commission has not yet issued a final order giving effect to this directive.

and, therefore, is unable to lawfully prepare and file pleadings in an action on behalf of a legal entity such as CCACW.

South Carolina courts have long held that the preparation and filing of pleadings constitutes the practice of law. “The generally understood definition of the practice of law embraces the preparation of pleadings, and other papers incident to actions and special proceedings, and the management of such actions and proceedings on behalf of clients before judges and courts.” Roberts v. LaConey, Op. No. 26376 (S.C. Sup. Ct. filed September 4, 2007) (Shearouse Adv. Sh. No. 33 at 20) (*citing* Brown v. Coe, 365 S.C. 137, 139, 616 S.E.2d 705, 706-07 (2005) (emphasis supplied). See, In re Duncan, 83 S.C. 186, 65 S.E. 210 (1909). Pursuant to the Commission’s Practice and Procedure Regulations, 26 S.C. Code Ann. Reg. R. 103-804(O),³ a “pleading” is defined as “document seeking relief in a proceeding before the Commission, including complaint, answer, application, protest, request, motion ... or petition.” (Emphasis supplied). Thus, Ms. Bryant is, by definition, engaging in the practice of law. The issue then becomes whether she is authorized to do so. The Company submits that she is not.

Initially, the Company notes that persons not licensed to practice law are prohibited from representing corporations in legal matters except under certain circumstances.

A natural person may present his own case in court or elsewhere, although he is not a licensed lawyer. A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act in person. It must act in all its affairs through agents or representatives. In legal matters, it must act, if at all, through licensed attorneys.

³ This rule entitled “Pleading” was previously denominated as 26 S.C. Code Ann. Regs. 103-804(F). This rule was recently amended and renumbered as 26 S.C. Code Ann. Regs 103-804(O) as published in the State Register Volume 31, Issue 4, effective April 27, 2007.

See State ex rel. Daniel v. Wells, 191 S.C. 468, ___, 5 S.E.2d 181,186 (1939) *citing* Clark v. Austin, 340 Mo. 467, 101 S.W. 2d 977, 982 (1937) (emphasis supplied). More specifically, officers of a corporation such as Ms. Bryant, who are not licensed as attorneys, are not permitted to file a complaint on behalf of the corporation.

Since a corporation cannot practice law, and can only act through the agency of natural persons, it follows that it can appear in court on its own behalf only through a licensed attorney. It cannot appear by an officer of the corporation who is not an attorney, and may not even file a complaint except by an attorney, whose authority to appear is presumed; in other words, a corporation cannot appear in propria persona.

State ex rel. Daniel v. Wells, *supra*. *citing* Mullin-Johnson Company v. Penn Mutual Life Insurance Company, 9 F. Supp. 175 (D.C Cal. 1934) (emphasis supplied). The Supreme Court has modified Wells to allow a business to be represented by a non-lawyer officer, agent or employee in civil magistrate's court proceedings. See In re Unauthorized Practice of Law Rules Proposed by the South Carolina Bar, 309 S.C. 304, 306, 422 S.E.2d 123, 124 (1992). This modification to Wells is inapplicable in the instant case since CCACW is not a business, but a non-profit corporation, and the instant matter is not a civil magistrate's court proceeding, but an administrative proceeding.

Another circumstance where unlicensed persons may appear and represent clients is where the matter involves an agency which has adopted regulations authorizing same. In re Unauthorized Practice, *supra*. Any such proposed regulation must be submitted to the Supreme Court at the same time it is submitted to Legislative Council and may be declared unenforceable by the Supreme Court. Id. This Commission has adopted no such regulation. To the contrary, Commission Regulation 103-804.S permits persons to appear in a representative capacity only in the following instances:

- (a) An individual may represent himself or herself in any proceeding before the Commission.
- (b) An attorney authorized to practice law in the State of South Carolina may represent a party in any proceeding before the Commission.

Furthermore, in its Order No. 2003-550, dated September 8, 2003, in Docket No. 2003-162-T, the Commission held:

We agree with [Movant] that the Petitions to Intervene ... should be dismissed. The Petitions to Intervene were signed by persons who are not attorneys. The South Carolina Public Service Commission has not, by regulation, authorized persons not licensed to practice law in South Carolina, to appear and represent clients before the Commission. The “practice of law embraces the preparation of pleadings, and other papers incident to actions and special proceedings....” [citation omitted]. A pleading includes a “petition” as defined by 26 S.C. Code Ann. Regs. 103-804(F).⁴ Therefore, Petitions to Intervene which are filed on behalf of someone other than an individual must be signed by an attorney.

The plain language of the Complaint indicates that Ms. Bryant is not representing herself in this matter; rather the Complaint has been brought in the name of CCACW, a non-profit corporation which exists as a separate legal entity. Ms. Bryant is not authorized to practice law and, therefore, actions taken by her in a representative capacity on behalf of CCACW are violative of law, and Commission regulations and precedent. The Complaint should therefore be summarily dismissed.⁵

III. THE COMPLAINT

The Complaint is legally insufficient and so deficiently drawn that it fails to support the request for a hearing. The Complaint relies upon numerous statutory and regulatory provisions which have been repealed and are no longer effective. For example, the Complaint requests that the

⁴ See Fn. 3, *supra*.

⁵ The Company does not, by submitting the within motion, waive its right to raise this issue with the Supreme Court independently of any appeal which may result in the event that this matter is permitted to go forward. See, e.g., Roberts v. LaConey, *supra*

Commission direct the Office of General Counsel and the South Carolina Attorney General to intervene in this action on behalf of the Complainant. The statutory and regulatory authority relied upon for this request has been repealed both implicitly and explicitly by the enactment of 2004 S.C. Acts 175 and 2006 S.C. Acts 318. Additionally the Complaint alleges CWS has failed to provide water which meets EPA safety standards and provides water from wells condemned by DHEC as unsafe and purports to include documentation supporting such allegations. However, the papers on file contain no such documents and thus, as drawn do not sufficiently place the Company upon notice as to the specifically facts alleged to support this allegation. “The purpose of a pleading is to put the adversary on notice as to the issues involved.” Burns v. Wannamaker, 286 S.C. 336, 339, 333 S.E.2d 358,360 (Ct. App. 1985). Rather, CCACW is requesting that this Commission permit a proceeding to proceed merely upon a bald assertion of the provision of “unsafe” water.

Furthermore, S.C. Code Ann. Section 58-5-270 (Supp. 2006) provides that “the commission may at its discretion refuse to entertain a petition as to the reasonableness of any rates or charges unless it be signed ... by not less than twenty-five consumers of the public utility named in the complaint.” The Petition filed by CCACW fails to contain the requisite signatures and the Commission is, therefore, not obligated to consider this request.

Finally, the Complaint has not been properly verified. 26 S.C. Code Ann. Regs. R. 103-803 requires a Complaint to include a “verification under oath ... if facts are alleged to be true within the knowledge of the person filing the pleading.” The verification attached to the Complaint was not properly notarized and, therefore, is not given under oath as required. Because the Complaint is so defectively drawn, CWS asserts that the Commission should decline to entertain this Complaint and

dismiss it as failing to meet the Commission's requirements for pleadings and the Complaint does not sufficiently place the Company on notice as to the issues specifically raised therein.

IV. COMPLAINT IS NOT WITHIN THE JURISDICTION OF THE COMMISSION

CWS also moves that the Commission dismiss those portions of the Complaint which are outside of the jurisdiction and scope of authority of the Commission. Included among the varied forms of relief requested, the Complaint seeks to have the Commission require CWS:

[T]o devise a schedule to sell all assets, liabilities, infrastructure, and customer areas to private or municipal buyers leaving Carolina Water Service, Inc., its subsidiaries, parent companies, parties in interest, or successor parties with absolutely no role in the delivery or maintenance of water and sewer services in the I-20 service area; and to submit said schedule to the Commission for approval...

Further, the Complaint requests that the Commission:

[I]ssue an Order directing the Attorney General of South Carolina to intervene on behalf of the Complainants as this matter constitutes grave public interest affecting the health and safety of the citizens of South Carolina...

Finally, the Complaint requests "the Commission to revoke certification of Carolina Water Service, Inc. to provide water and sewer service to the customers of the I-20 service area".

The Commission's jurisdiction is limited to the adjudication of any claimed act or omission for a water or wastewater utility "under the provisions of Articles 1, 3 and 5 of this chapter," S.C. Code Ann. §58-5-270. The Commission has previously acknowledged this limitation of its jurisdiction, stating that it "has jurisdiction in a complaint proceeding to consider **only matters identified in these three articles listed in the statute.**" S.C. Dep't of Health & Env'tl. Control v. United Utility Cos., Inc., Order No. 2002-864, Docket No. 2001-493-S (Pub. Serv. Comm'n of S.C. Dec. 20, 2002) (emphasis supplied). The request of the Commission to require CWS to sell its assets

and infrastructure does not fall within the Commission's governing authority found in the three applicable statutory articles and is, therefore, improperly before the Commission. Similarly, while S.C. Code Ann. Section 58-3-120 previously afforded the Commission the authority to direct the Attorney General to intervene in certain matters, this section was repealed with the enactment of Act 175 in 2004. Finally, Articles 1, 3 and 5 of Chapter 5, Title 58 of the South Carolina Code do not afford the Commission the authority to revoke the "certificate" of a water or wastewater utility. Therefore, these portions of the Complaint should be dismissed as they are not within the purview of the Commission to grant.

V. FRIVOLOUS PROCEEDING

As the Commission is well aware, both Ms. Bryant and CCACW have a lengthy history of filing complaints against CWS. These complaints have often proven to be unsupported by evidence and are interposed simply to harass and delay the Company from exercising its regulatory and statutory authority. CWS asserts that the present action is yet another such frivolous proceeding in that the Complaint is baseless in fact, contains blatantly inaccurate statements of law, and merely recycles previous complaints by Ms. Bryant and CCACW. CWS, therefore, asserts that the Commission should summarily dismiss this complaint and sanction Ms. Bryant and CCACW by awarding CWS its costs and attorneys' fees incurred in defending this groundless action.

Rule 11(a), SCRCP, states that every pleading must be signed by the party or its attorney which constitutes a certificate that the person has read the pleading, that to the best of his knowledge, information and belief there is good ground to support it, and that the pleading is not interposed for delay. Additionally, 26 S.C. Code Ann. Regs. R. 103-822 states:

All pleadings filed with the Commission shall be signed. The signature of the person, or its authorized representative, submitting the pleading, shall constitute an admission that such person or representative has read the pleading and knows the contents thereof, and, if the signatory is acting in a representative capacity, that such signatory has the capacity and authority specified therein.

Further, S.C. Code Ann. Section 15-36-10(A)(3) states:

The signature of an attorney or a pro se litigant constitutes a certificate to the court that:

- (a) the person has read the document;
- (b) a reasonable attorney in the same circumstances would believe that under the facts his claim or defense may be warranted under the existing law or, if his claim or defense is not warranted under the existing law, a good faith argument exists for the extension, modification, or reversal of existing law;
- (c) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of a civil cause is not intended merely to harass or injure the other party; and
- (d) a reasonable attorney in the same circumstances would believe his claim or defense is not frivolous, interposed for delay, or brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based.

CWS asserts that the language and issues contained in the Complaint clearly demonstrate that CCACW and Ms. Bryant, acting as its representative in this matter, did not read the Complaint prior to filing. Initially, CWS points out that the present Complaint is virtually identical to complaints previously filed with the Commission by Ms. Bryant and CCACW in Docket Nos. 1996-259-W/S and 1997-378-W/S. As CCACW is simply recycling old documents, the issues contained therein are not novel and do not assert new facts for the Commission's consideration. Rather, the Complaint is simply a restatement of old issues which Ms. Bryant and CCACW have attempted to assert time and time again.

It is further apparent from the four corners of the document that Ms. Bryant failed to properly read this Complaint as it makes incorrect citations of law, purports to include documentation of allegations which has been omitted, and attempts to relitigate issues previously presented to the Commission. For example, the Complaint prays that the Commission “issue an Order directing the Attorney General of South Carolina to intervene” pursuant to S.C. Code Ann. Section 58-3-120(1) which was repealed by the General Assembly in 2004. The Complaint further alleges that CWS has supplied to its customers “water which contains levels of radiation double acceptable EPA safety standards” and claims to have attached supporting DHEC documents. No such documents have been included, however. Additionally, the Complaint claims that CWS has provided water from condemned wells. As Ms. Bryant is well aware, CWS has not obtained water from its wells in the I-20 service area since 1996. See Order No. 2001-887, dated August 27, 2001, Docket No. 2000-207-W/S. See also, Docket No. 2006-97-W/S, Hearing # 10786, June 15, 2005, Transcript of Testimony and Proceedings, Volume 4, p. 13, l.11 - p. 14, l.1. Rather, and as the Commission is aware, CWS purchases bulk water supplies from the City of West Columbia and distributes that water to its customers.

Additionally, CCACW’s allegations of improper maintenance and operations of its facilities are directly contrary to the Management Audit of Utilities, Inc. and its subsidiaries including CWS conducted in connection with the Company’s application for an increase in its rates and charges in Docket No. 2006-92-W/S. Therein, an independent auditor, Schumaker & Company, found that “Utilities, Inc. has done a good job of providing water and wastewater services to its customers.” Final Report on the Management Review Audit of Utilities, Inc. with Specific Focus on the Five Subsidiary Water and Wastewater Companies, Schumaker & Company, April 2, 2007, p. 4. Further,

the report found that “[t]he water and wastewater facilities appear well maintained and the operators interviewed appear knowledgeable about the operations of the specific facilities.” *Id.* at 39. Finally, the Complaint prays that the Commission reduce the tariff to a “reasonable” amount. The Commission recently issued an Order on Remand adopting the Company’s currently authorized rate schedule as in its Order No. 2007-135, dated March 1, 2007, in Docket No. 2004-357-W/S, thus establishing “just and reasonable” rates pursuant to S.C. Code Ann. Section 58-5-210. Therefore, CCACW’s implication that CWS’s rates are excessive are simply unsubstantiated. Such inaccuracies and false representations clearly demonstrate that Ms. Bryant, as the representative of CCACW, has failed to read the Complaint and ensure that the claims made therein are reasonably supported.

S.C. Code Ann. Section 15-36-10(B)(2) states “the court, upon its own motion or motion of a party, may impose upon the person in violation any sanction which the court considers just, equitable, and proper under the circumstances.” Further, Section 15-36-10(G)(1) provides that sanctions may include “an order for the party represented by an attorney or pro se litigant to pay the reasonable costs and attorney’s fees of the prevailing party.” CWS believes that the Commission should sanction CCACW and Ms. Bryant in her official capacity as its President for filing this baseless complaint. Ms. Bryant, acting as the representative of CCACW, prepared and filed these documents on its behalf. The language of the Complaint clearly demonstrates that Ms. Bryant failed to adequately read the pleadings prior to its filing and CWS asserts that a reasonable attorney would not believe that the claims asserted in the Complaint are warranted.

Such accusations, while frivolous and unsupported by evidence, often lead to proceedings which are complex and time consuming and require the Company to invest a great deal of money to defend against accusations that are usually unsupported by any evidence. Most recently, the last

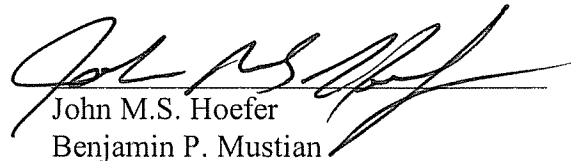
complaint filed by Ms. Bryant in Docket No. 2007-26-W/S caused the Company to incur legal expenses in excess of twelve thousand dollars (\$12,000), even though the Complaint was ultimately dismissed for lack of evidence. This cost will necessarily be passed through to the rate payers in the Company's next rate increase in the form of increased rates. By continuing to allow Ms. Bryant and CCACW to pursue baseless matters will only cause the Company to incur additional expense which will result in increased rates for all of CWS's customers.⁶ This petition has no basis in law or fact, is totally without merit, and simply wastes the Company's and the Commission's time. This is simply an attempt to use the legal and regulatory process as a coercive weapon and such actions should not only be prohibited, they should also be punished. Therefore, CWS moves that the Commission dismiss this Complaint as being frivolous, sanction Ms. Bryant and CCACW for bringing a frivolous complaint, and award CWS costs and attorneys fees incurred for defending this action.

VI. CONCLUSION

For the foregoing reasons, Respondent respectfully requests that Petitioner's Complaint be dismissed as it is the product of the unauthorized practice of law, that the assertions contained therein are frivolous, and that it is defectively drawn. Further, CWS requests that the Commission sanction Petitioner and award attorneys' fees to the Respondent pursuant to S.C. Code Ann. Section 15-36-10, *et seq.* In the alternative, Respondent requests that the Commission dismiss those portions of the Complaint which are not within the proper jurisdiction of the Commission.

[SIGNATURE PAGE FOLLOWS]

⁶ The Company notes that while it is statutorily restricted from bringing a rate case more than once every twelve months, Ms. Bryant and CCACW are not limited in the number of Complaints they may bring. Therefore, the Company incurs financial difficulties by having to carry these significant, unreimbursed expenses for a long period of time. Additionally, in order to reimburse these types of needless expenses, CWS is forced to file for rate increases more often.



John M.S. Hoefer

Benjamin P. Mustian

WILLOUGHBY & HOEFER, P.A.

Post Office Box 8416

Columbia, South Carolina 29202-8416

803-252-3300

Attorneys for Defendant/Respondent

Columbia, South Carolina
This 12th day of September, 2007

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2007-294-W/S

| | | |
|------------------------------|---|---------------|
| IN RE: |) | |
| |) | |
| Concerned Citizens Against |) | |
| Carolina Water, Inc. |) | |
| Complainant/Petitioner |) | ANSWER |
| |) | |
| v. |) | |
| |) | |
| Carolina Water Service, Inc. |) | |
| Defendant/Respondent |) | |
| _____ |) | |

Pursuant to S.C. Code Ann. Regs. RR. 103-837 and 103-841 (1976, as amended), in compliance with the Notice issued by the Commission’s Chief Clerk and Administrator dated August 20, 2007, and incorporating all defenses heretofore raised by motion and reserving all defenses which may hereafter be raised by motion, Carolina Water Service, Inc. (“CWS”) answers the complaint of the Complainant/Petitioner above-named as follows:

FOR A FIRST DEFENSE

1. CWS denies each and every allegation of the complaint except as hereinafter admitted, modified or qualified.

FOR A SECOND DEFENSE

2. CWS is without sufficient information to form a belief as to the truth or falsity of the allegations of paragraph 1 of the Complaint and therefore denies same and demands strict proof thereof.

3. The Company denies the allegation in paragraph 2 of the Complaint that the Company is an Illinois corporation. The Company admits the remaining allegations of paragraph 2.

4. Answering paragraph 3 of the Complaint, the Company states that it is a “public utility” as defined by S.C. Code Ann. Section 58-5-10(3) (Supp. 2006) and denies any allocation inconsistent therewith.

5. Answering paragraphs 4 and 5, CWS prays reference to the specific language of the statutes which those paragraphs cite as authority.

6. The Company denies the allegations of paragraph 6 of the Complaint. The Company is subject to oversight by multiple state and federal entities including, but not limited to, the Public Service Commission of South Carolina (“Commission”), the South Carolina Office of Regulatory Staff (“ORS”), the South Carolina Department of Health and Environmental Control (“DHEC”), and the Federal Environmental Protection Agency (“EPA”). With respect to the responsibilities of the Commission, the Company refers to the applicable laws of the State of South Carolina and their interpretation by the courts of this State.

7. Answering paragraph 7 of the Complaint, for a proper description of the Commission’s authority, the Company prays reference to the language of the specific statutes cited in paragraph 7. The Company denies that such statutes empower the Commission to revoke the Company’s “certification.”

8. Answering paragraph 8 of the Complaint, the Company prays reference to the language of S.C. Code Ann. Section 58-5-300(1976) for a proper statement of its provisions.

9. Paragraph 9 does not appear to require a response from CWS; however, to the extent that these sentences can be read to require a response, same are denied. CWS would further note that

Petitioner has filed the instant request with the Commission without including the supporting documentation as required by S.C. Code Ann. Section 58-5-270 (Supp. 2006) and that, therefore, the Commission may, at its discretion, refuse to entertain said petition.

10. The Company denies the allegations paragraphs 10 and 11 of the Complaint. S.C. Code Ann. Section 58-5-3-120(1) (1976) has been repealed by 2004 S.C. Acts 175 and is, therefore, no longer effective or valid. The Company further denies that the allegations contained within the Complaint constitute a matter of grave public interest affecting the health, safety, and economic security of citizens of South Carolina.

11. The Company denies the allegations contained in paragraph 12 of the Complaint.

12. Answering paragraphs 13 through 17 of the Complaint, the Company prays reference to the specific language of each regulation which those paragraphs cite for a proper statement of their provisions and requirements.

13. Answering paragraph 18 of the Complaint, the Company states that the term “public trustee” is not a proper description of the Company under South Carolina law and such term does not describe its legal responsibilities. The Company further prays reference to the specific statutory, regulatory, or other such authority relied upon for a proper description of its legal obligations with respect to service and customer inquiries and complaints.

14. Answering the allegations contained in paragraph 19 of the Complaint, the Company prays reference to specific statutory, regulatory, or other such authority relied upon for a proper description of its legal obligations with respect to the rates it charges for its services.

15. Answering paragraphs 20 through 24, the Company prays reference to the specific language of each regulation which those regulations cite for a proper statement of their provisions and requirements.

16. The Company denies the allegations contained in paragraphs 25 through 27 of the Complaint.

17. The Company denies the allegations contained in paragraphs 28 of the Complaint. The Company further answers that the copy of the Complaint with which it was served did not include the referenced "Attachment B."

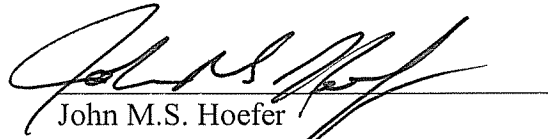
18. The Company denies the allegations contained in paragraphs 29 through 36 of the Complaint.

FOR A FIRST AFFIRMATIVE DEFENSE

19. The complaint fails to state facts sufficient to constitute a cause of action. The Complaint does not make any allegation specifying the time of the incidents complained of and, therefore, does not sufficiently establish the basis for a complaint cognizable under the law. See Rule 12(b)(6) SCRCF, S.C. Code Ann. § 58-5-270 (1976) and 26 S.C. Code Ann. RR. 103-835.A (1976 as amended).

WHEREFORE, having fully set forth its Answer, CWS requests that the Commission issue an order in response to the Complaint of Complainant/Petitioner dismissing the Complaint with prejudice and granting such other and further relief to the Company as is just and proper.

[SIGNATURE PAGE FOLLOWS]



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This 12th day of September, 2007